

REMARKS

The Amendments

The claims are amended to direct them primarily to the elected claims indicated to be allowable and to claims appropriate for rejoinder. In independent claim 22, the formula I is replaced by the new, more specific, formula IIa which is fully within the scope of formula I and believed to more clearly describe the claimed compounds. Also, claim 31 is amended to address the 35 U.S.C. §112 rejection.

The claim amendments are similar to those made in the After Final Amendment filed October 9, 2007, which was not entered. The current amendments address the errors noted in the Advisory Action of October 18, 2007, i.e., the Q and Z variables are now defined in claim 22 and the piperidine compound is removed from claim 40.

It is submitted that the above amendments would put the application in condition for allowance or materially reduce or simplify the issues for appeal. The amendments do not raise new issues or present new matter and do not present additional claims without the cancellation of an equal number of finally rejected claims. The new dependent claims are provided to replace the canceled dependent claims and are presented as new claims for ease of the amendment. The amendments have been made to direct the claims to the apparently allowable subject matter indicated in the Final action. Thus, they were not earlier presented. Accordingly, it is submitted that the requested amendments should be entered.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

Election/Restriction Requirement of Method Claims

Applicants note the restriction of the method of use claims. The method of use claims have been amended for greater specificity and to remove the functional use claim. It is requested that the claims be considered for rejoinder upon a finding of allowability of the compound claims from which they depend.

Election/Restriction Requirement of Compound Claims

The compound claims have been amended in order to direct them to the subject matter indicated to be examined and allowable, with one exception. In the definition of X, the group $-\text{CH}_2-\text{CH}_2-\text{NR}^4-$ is retained in addition to $-\text{CH}_2-\text{CH}_2-\text{O}-$. It is urged that inclusion of this group in the examined claims would not amount to an additional serious burden of search and examination. The examples in the specification provide clear support for the compounds of currently claimed scope. Further, it is urged that, the additional scope of compounds where X is $-\text{CH}_2-\text{CH}_2-\text{NR}^4-$ would not be subject to a proper grounds of restriction. At most, they are subject to election under Markush practice. Since the claims otherwise appear to be in condition for allowance, examination of this additional species should proceed under Markush practice.

Applicants are not claiming billions of compounds. The claims above are quite concise and should be amenable to examination. It is not clear to applicants what aspects of the claims are not understood in view of the statements made in the Office action (i.e., “the variables x, y, Z etc. are not known chemical elements” and “the examiner has no idea of where the other recited variables are even attached to the formula.”) If a more precise explanation of what is not understood about the claims can be provided, applicants are willing to make any changes deemed necessary to clarify the invention. The claims are believed to be presented in a long-used and accepted format for defining a structure with variables. Certainly, the current claims are even more precise than those previously presented.

The Rejection under 35 U.S.C. §112

The rejection of claim 31 under 35 U.S.C. §112 is believed to be rendered moot by the above amendment thereto.

The Provisional Obviousness-type Double Patenting Rejections

The provisional obviousness-type double patenting rejections over copending applications, Ser. Nos. 11/104,889 and 11/104,915, are each respectfully traversed. Both of the copending applications were filed after the current application, i.e., the current application is the earliest filed application. In accordance with MPEP §804(I)(B)(1), when the claims are otherwise in condition for allowance – as appears to be the case here – a terminal disclaimer

should not be required in this earliest application and the provisional obviousness-type double patenting rejections over the other two applications should be withdrawn.

It is submitted that the application is in condition for allowance. But the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

No fee is believed due with this response, however, the Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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Attorney Docket No.: 1/1406

Date: November 1, 2007

JAS/eak